

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

Snittjer Grain Company, Inc.
Grundy County

ADMINISTRATIVE CONSENT ORDER

NO. 2013-AQ-05

TO: Snittjer Grain Company, Inc.
Bernard P. (Pat) Kennedy
Registered Agent
204 North Adams Street
Wellsburg, Iowa 50680

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Snittjer Grain Company, Inc. (Snittjer) for the purpose of resolving violations pertaining to illegal open burning. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Chris Gelner
Iowa Department of Natural Resources
Field Office No. 2
2300 15th Street SW
Mason City, IA 50401
Phone: 641-424-4073

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any

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order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Snittjer is an agriculture company that offers grain storage, drying, grain contracts, fertilizer, seed, chemicals, fuel pumps, fuel delivery, and feed for cattle, hogs, and show animals. Snittjer is located at 204 North Adams Street in Wellsburg, Grundy County, Iowa.

2. On September 13, 2012, an anonymous complaint was received reporting a large plume of opaque black smoke located south of Highway US 20 on the NW side of Wellsburg. David Miller of DNR Field Office No. 2 called and spoke with Deputy Ron Tordoff at the Grundy County Sheriff's office. Deputy Tordoff informed Mr. Miller that the fire was at Snittjer Grain Elevator. The deputy had observed the burning of large trees and pallets and garbage.

3. On September 17, 2012, Environmental Specialist Chris Gelner of DNR Field Office No. 2 investigated the complaint regarding the Snittjer facility. When Mr. Gelner stopped at the Snittjer facility office, he spoke with Bernard P. (Pat) Kennedy, the owner and manager of Snittjer. Mr. Gelner reviewed the complaint with Mr. Kennedy, and Mr. Kennedy stated that burning does occur at the facility. Mr. Gelner asked Mr. Kennedy where the burning had taken place on September 13, and Mr. Kennedy showed Mr. Gelner a large pit containing piles of solid waste. The piles were still smoking at the time of the visit, and Mr. Gelner observed metal scraps, plastic, shingles, tire beads, and other garbage. Also, on the way to the burn pit area, Mr. Gelner observed large piles of tree trimmings and branches on the property, which Mr. Kennedy explained were dropped off by Wellsburg residents to be burned at the site. Mr. Gelner reviewed the open burning and solid waste regulations with Mr. Kennedy and explained that the illegal burning needed to cease immediately, and the solid waste needed to be properly disposed of in accordance with the law.

4. A September 19, 2012, Notice of Violation (NOV) letter was sent to Mr. Kennedy at Snittjer requiring immediate cessation of open burning and removal of illegally disposed solid waste by November 19, 2012. Mr. Kennedy notified Mr. Gelner that the required actions had been completed on September 20, 2012, and a follow-up visit was conducted where a Snittjer employee provided disposal receipts and digital photos were taken of the site.

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Past Enforcement Actions:

5. On February 23, 1977, illegal open burning of trade waste was documented during a routine inspection of the Snittjer facility. Mr. Kennedy was present during the inspection, and a copy of DNR's rules was sent to Snittjer in a letter documenting the violations. A copy of the DNR rules prohibiting illegal open burning was included with the letter.

6. On April 8, 1986, DNR Field Office No. 2 personnel observed open burning of railroad ties at the Snittjer facility. An employee on site during the investigation informed DNR personnel that he was hired by Mr. Kennedy to clean up the property. An April 15, 1986 letter was sent to Mr. Kennedy at Snittjer stating that the disposal of solid waste materials by open burning is illegal. A copy of the DNR rules prohibiting illegal open burning was included with the letter.

7. On June 27, 1986, an investigation into an open burning complaint was initiated by DNR Field Office No. 2, and DNR personnel documented the illegal open burning of railroad ties on the Snittjer property. A July 1, 1986, letter was sent to Mr. Kennedy at the Snittjer facility, informing him that the open burning of railroad ties is prohibited.

8. On January 7, 2000, DNR Field Office No. 2 personnel observed and documented the open burning of feed sacks and lumber in a large burn barrel at the Snittjer facility. An employee at the facility informed DNR personnel that open burning was acceptable because the city had no ordinances against it. A January 10, 2000, letter was sent to Mr. Kennedy at the Snittjer facility, stating that open burning of trade waste is prohibited and should immediately cease. A copy of the open burning rules was included with the letter.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of tires, trade wastes, and trees and tree trimmings not originating on the property is specifically prohibited. The illegal open burning of solid waste by Snittjer demonstrates violations of this provision.

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V. ORDER

THEREFORE, DNR orders and Snittjer agrees to the following:

1. Snittjer shall pay a penalty of \$10,000.00 within 30 days of the date this order is signed by the Director.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$10,000.00 is assessed by this administrative consent order. The penalty must be paid within 30 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B. 146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Snittjer has avoided the tipping fee costs at the designated landfill. Rural Iowa Waste Management (RIWMA), the local landfill, charges \$40.00 per ton for regular waste and \$50.00 per ton for special waste including asbestos waste generated in Wellsburg and Grundy County. Delayed costs, including transportation, fuel, and manual labor in cleaning up waste also would have been incurred for proper disposal of the burned solid waste. Based on the size of the burn area and the large quantity of burned remains, it is evident that a significant amount of waste has been disposed of by illegal open burning. For the above reasons, \$2,000.00 is assessed for economic benefit.

Gravity of the Violation – Snittjer's illegal open burning included trade waste, metal scraps, plastic, shingles, tire beads, and other garbage, as well as tree branches and trimmings that did not originate on the property. Many of these materials release harmful toxins into the environment when burned. Snittjer has continued to burn illegally even after being informed of the rules in four previous

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letters sent over a period of thirty-five years, and despite Mr. Kennedy's personal knowledge of each of the previous incidents. Mr. Kennedy and Snittjer have been provided with copies of the DNR rules prohibiting illegal open burning on at least four separate occasions prior the September 2012 open burning incident. Mr. Kennedy and Snittjer's repeated disregard for the DNR regulations threatens the integrity of the air quality program. For the above reasons, \$2,000.00 is assessed for gravity.

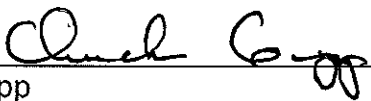
Culpability – Mr. Kennedy is the owner of Snittjer and has been the DNR contact regarding these illegal open burning incidents since at least 1977. Mr. Kennedy is responsible for what happens on Snittjer property, and has intentionally and knowingly allowed the open burning of prohibited wastes even after being informed of and repeatedly being given copies of the rules prohibiting illegal burning. The DNR's repeated investigation of and instructions regarding the prohibition of illegal open burning at Snittjer facility property has failed to maintain compliance. For the above reasons \$6,000.00 is assessed for culpability.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Snittjer. For that reason, Snittjer waives its rights to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



Chuck Gipp
Iowa Department of Natural Resources

Dated this 11th day of
February, 2013.



Snittjer Grain Company, Inc

Dated this 13th day of
Feb, 2013.

DNR Field Office 2; VII.C.2